that her physical handicap would prejudice the prospect of a suitable marriage in the community to which she belongs, as suggested by counsel.

Taking all the relevant circumstances into consideration, I would assess a sum of $8,000 as a fair compensation under the head of general damages.

There will be judgment for the plaintiff in the sum of $9,250 and costs. The money to be paid into court to be dealt with on further application.

Judgment for the plaintiff.

Solicitors: *H. W. Tan & George; Lovelace & Hastings.*

KWEK HOW BOK v. LEE SIN KWENG

[O.C.J. (Winslow J.) December 9, 1965]

[Singapore — Suit No. 1305 of 1965]

Damages — Personal injuries — Leg — ½" shortening — Compound fracture of tibia and fibula.

Negligence — Duty of a following driver — Contributory negligence — Apportionment of blame — Damages.

This was a claim for damages for personal injuries sustained in an accident arising from a collision between a taxi driven by the defendant and a motor cycle ridden by the plaintiff. On the facts it appeared that the plaintiff was riding this motor cycle and following the taxi driven by the defendant. The taxi suddenly stopped and the motor cycle then knocked against the taxi.

Held: (1) a following driver should as far as reasonably possible take up such a position and drive in such a fashion as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated but the question whether he has fulfilled this duty is a question of fact which must depend on the circumstances of the particular case;

(2) in this case on the facts both the plaintiff and the defendant were equally to blame for the collision and therefore the plaintiff was entitled to half the agreed general damages and half the special damages.

Cases referred to:—

(1) *Brown & Lynn* v. *Western S. M. T. Co.* [1945] Sessions Cases 35.

(2) *Smith* v. *Harris* [1939] 3 All E.R. 960.

(3) *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [1949] 2 K.B. 291.

(4) *Jones* v. *Livox Quarries Ltd.* [1952] 2 Q.B. 615.

(5) *Swadling* v. *Cooper* [1931] A.C. 1.

CIVIL COURT.

Denis Murphy for the plaintiff.

Lim Cheng Pang for the defendant.

Cur. Adv. Vult.

Winslow J.: This case involves a collision which occurred at about 7.30 p.m. on 7th March 1964 between a taxi driven by the defendant along Kallang Road in the direction of the city and a motor-cycle ridden by the plaintiff which, according to the plaintiff, was following the taxi at a distance of 10 feet.

The plaintiff claim damages as a result of injuries sustained by him, the most serious one of which was a compound fracture of the left tibia and fibula resulting in a half inch shortening of the left leg and some slight wasting in the girth of the left calf and left thigh. The fractures have since healed but there is a slight bony prominence over the antero-medial aspect of the leg.

General damages have been agreed at $5,000.

I have to decide whether the plaintiff's claim should succeed and to determine the quantum of special damage, the largest item of which relates to loss of earnings as a coffee stall proprietor for five months at $250 per month.

I assess the special damage at $680, being as to $80 cost of transport to and from the General Hospital and the cost of repairs to the motor-cycle. As to his loss of earnings I am not prepared to believe that he lost $250 per month for five months. I do not believe the witnesses who testified to the fact that an ex-trisha rider who acted as a relief for the plaintiff was paid $8 per day for his services. It is more likely that he was paid something in the region of at the most $4 per day which would still have left the plaintiff, who was in partnership with another, a profit of about $130 instead of $250 per month.

I now turn to a consideration of the evidence in this case. In his first report to the police the plaintiff claimed that the defendant "without giving any signal turned to the side intending to stop. So I rode close to the side and as I had no time I was unable to do anything".

In his statement of claim the plaintiff alleges that "the defendant so negligently drove motor taxi No. SH. 2678 along the said road and in the same direction as to cause the same to collide with the said motor cycle". The particulars of negligence set out in paragraph 2 thereof are as follows:—

(a) Failing to keep any or any proper look out;

(b) Driving at an excessive speed in the circumtances;

(c) Failing to have any or any sufficient regard for other users of the highway;

(d) Swerving suddenly to the left;

(e) Failing to give any or any sufficient warning of his intention to turn left;

(f) Failing to observe the presence of the plaintiff on the highway;

(g) Failing to stop, swerve, slow down or otherwise avoid the said collision.

In his evidence, however, the plaintiff said that as he was following the defendant's taxi at a distance of about 10 feet in the outer lane about 8 or 9 feet from the road divider the defendant swerved to the left on being hailed by a prospective fare and, on hearing a remonstrative hoot from a van in the inner lane on his near side, swerved to his right and stopped. On his own version he was travelling down an incline towards the end of Kallang Bridge at a speed of 23/4 miles per hour behind the taxi which was travelling at 20 miles per hour according to the defendant.

The defendant, on the other hand, in his report to the police claimed that he was travelling at a speed of about 20 miles per hour when the plaintiff's motor-cycle came from behind and "knocked my rear right lamp and a part of the rear bumper caused a damage to the said lamp and the said bumper bent slightly".

In his defence the defendant admits the collision but denies negligence. In his evidence the defendant said that he had to make an emergency stop because the car preceding him stopped in order to turn right at a break in the concrete divider opposite a lane to his right.

It will be seen from the above that it is only in court that either the plaintiff or the defendant mentioned, for the first time, that the defendant's taxi made a sudden stop. Why neither of them mentioned this in their first reports to the police it is difficult to understand. One would have thought that if the taxi had, in fact, made an abrupt stop this would have been the first thing the plaintiff would have pointed out at the very first opportunity. On the other hand, it is more likely that the defendant did, in fact, come to a stop in the middle of the outer lane, 48 feet from the break in the divider for reasons which he must have thought would be wiser, in his own interests, not to disclose at that time and it was in court, after he had been confronted with a definite allegation of a sudden stop on his part, that he decided to give an explanation which would tend to exonerate him. He, therefore, claimed, in evidence, that he made an emergency stop because the car preceding him stopped in order to turn right.

In cross examination he was unable to explain why he stopped as far away as 70 feet from the car which was in front of him. In fairness to him I should mention that, although he did not claim in his first report that he had to make a sudden stop, he did refer to the presence of a car in front whose number he gave.

The reason why I reserved judgment at the end of the hearing was for the purpose of reviewing the authorities on the principles of the law on negligence applicable to cases where one vehicle follows another, particularly in the light of Mr. Murphy's contention that the defendant, by stopping in the middle of the road, was solely responsible for the collision and that there could be no possible question of any contributory negligence on the part of the plaintiff who was following the defendant's taxi at a distance of 10 feet.

It is common ground that the traffic was heavy at the material time in both lanes on that half of Kallang Road.

If regard is had only to their reports and pleadings and the sketch-plan, both vehicles would appear to have been in motion when the collision took place. In evidence, however, both claimed that the taxi stopped before the collision.

In my opinion the defendant has not given a satisfactory explanation of his sudden stop which, according to him, occurred 70 feet behind the preceding vehicle and there can be little doubt that he did not show sufficient regard for vehicles behind him. The question, however, arises whether this excuses the plaintiff entirely, considering that —

(a) his original version was that the taxi swerved left;

(b) his pleadings do not allege a sudden stop and, in fact, allege excessive speed and a failure to stop on the part of the defendant;

(c) he now claims in evidence that the taxi swerved left, then right and stopped by jamming on its brakes — which, if believed, distinguishes this case to some extent from the usual type of case of a vehicle following another vehicle which, without swerving, stops suddenly.

In my view, if the taxi had, in fact, swerved left before it swerved right and stopped, he should have been able to take avoiding action had he been more alert and had he been keeping at a safer distance behind the taxi and travelling at a lower speed. If his present version is correct, he was probably preparing to overtake the taxi after it swerved to the left and just before it swerved to the right again in circumstances where such a course of action was obviously dangerous.

As Lord Justice-Clerk (Cooper) said in *Brown & Lynn* v. *Western S. M. T. Co.*—[1]

> "We were urged in the course of debate to substitute our own definition of the limits of a following driver's duty, and even to prescribe the proper interval at which successive vehicles should keep station when travelling in a city street. I am not prepared to do so. The distance which should separate two vehicles travelling one behind the other must depend upon many variable factors — their speed, the nature of the locality, the other traffic present or to be expected, the opportunity available to the following driver of commanding a view ahead of the leading vehicle, the distance within which the following vehicle can be pulled up, and many other things. The following driver is, in my view, bound, so

far as reasonably possible, to take up such a position, and to drive in such a fashion, as will enable him to deal successfully with all traffic exigencies reasonably to be anticipated: but whether he has fulfilled this duty must in every case be a question of fact, just as it is a question of fact whether, on any emergency disclosing itself, the following driver acted with the alertness, skill and judgment reasonably to be expected in the circumstances".

In *Smith* v. *Harris* [2] the principles of the law on negligence applicable to vehicles proceeding one behind the other was again carefully considered. That case involved a string of 5 motor-cyclists engaged on a treasure hunt in the course of which the leader made a sudden stop resulting in the fourth motor-cyclist running into the second. The plaintiff was riding on the pillion seat of the fourth motor-cycle and sustained injuries. It was held that both the leader and the fourth motor-cyclist were equally to blame. Scott L.J. said at page 963 —

"The essence of a band of motor cycles in a line such as that is that the speed should be so limited as to make it quite certain that each one, with the interval at which he is in fact following, can stop in time to avoid a predecessor in the case of any breakdown or sudden stop of any sort".

In both the cases I have cited above it was emphasised that the application of the principles laid down would depend on the particular facts before the court. It is clear that these judgments should be used as guides and not as binding authorities even in cases where the facts are more or less similar.

The question of contributory negligence was canvassed in the case of *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [3] by Bucknill L.J. in the following terms:—

". . . when one is considering the question of contributory negligence, it is not necessary to show that the negligence constituted a breach of duty to the defendant. It is sufficient to show lack of reasonable care by the plaintiff for his own safety".

As Denning L.J. said in *Jones* v. *Livox Quarries Ltd.* —[4]

"Although contributory negligence does not depend on a duty of care, it does depend on foreseeability. Just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. A person is guilty of contributory negligence if he ought reasonably to have forseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless".

I have borne in mind the proposition stated by Lord Hailsham in *Swadling* v. *Cooper* [5] to the effect that —

"Mere failure to avoid the collision by taking some extraordinary precaution does not in itself constitute negligence: the plaintiff has no right to complain if in the agony of the collision the defendant fails to take some step which might have prevented a collision unless that step is one which a reasonably careful man would fairly be expected to take in the circumstances".

In the case of *Brown & Lynn* v. *Western S.M.T. Co.* cited above, Lord Justice-Clerk (Cooper) had the following observations to make on the duty of a following driver:—

"But the duty of the following driver is a continuous duty which persists independently of any actual emergency or of the leading driver's reaction to such emergency, and the question whether the following driver has failed in his duty cannot depend upon whether the leading driver has fulfilled his".

In all the circumstances of this case I am satisfied that the plaintiff contributed towards his own discomfiture. I find them equally to blame for the collision. In reaching this conclusion I have taken into account the fact that neither was an impressive witness, that both have varied their stories and that, had I been deciding the case strictly as it was pleaded, I would probably have found that the collision took place whilst both vehicles were in motion and that the plaintiff was solely to blame.

The plaintiff will accordingly receive half the agreed general damages i.e. $2,500 and half the special damage as assessed i.e. $340.

Judgment will, therefore, be entered for the plaintiff in the sum of $2,840 with the usual orders as to costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; Donaldson & Burkinshaw.*

PHANG MOH SHIN v. COMMISSIONER OF POLICE, SINGAPORE

[O.C.J. (Chua J.) December 10, 1965]

[Singapore — Summons-in-Chambers No. 55 of 1965 In Suit No. 7 of 1965]

Administrative Law — Action for declaration — Dismissal of police constable by commanding officer — Appeal to Commissioner dismissed — Whether action will lie against the commissioner.

The plaintiff had issued a writ against the Commissioner of Police praying for a declaration that his dismissal from the Singapore Police Force was illegal, void, inoperative and of no effect. The complaint of the plaintiff was that he was never given adequate notice of the charge nor was he given any opportunity to rebut the charge and the evidence against him. Disciplinary proceedings had been taken against the plaintiff under the Police Force Ordinance, 1958, and as a result the Commanding Officer had ordered that he be dismissed. He appealed to the Commissioner of Police, who dismissed the appeal. The Commissioner of Police entered conditional appearance and applied for an order to set aside the service of the writ of summons on the contention that the Commissioner of Police was not the proper defendant as the complaint of the plaintiff was not against the Commissioner of Police but against the officer who held the inquiry.

Held: the complaint of the plaintiff was not only against the officer who held the inquiry and the commanding officer who dismissed him but also against the Commissioner of Police for dismissing his appeal and therefore the Commissioner of Police was a proper defendant in this case.